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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/870,436	05/30/2001	Thaddeus John Gabara	80	4086

7590 01/03/2003

Rayan, Mason & Lewis, LLP
90 Forest Avenue
Locust Valley, NY 11560

EXAMINER

NGUYEN, HAI L

ART UNIT	PAPER NUMBER
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2816

DATE MAILED: 01/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/870,436

Applicant(s)

GABARA, THADDEUS JOHN

Examiner

Hai L. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 September 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) 8-35 and 38-41 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 36 and 37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 May 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: |

DETAILED ACTION

Response to Amendment and Arguments

1. Applicant's amendment filed on 9/30/02 has been received and entered in the case.

Applicant's arguments with respect to the prior art rejections by the previous office action mailed on 04/25/02 have been fully considered but are not deemed to be persuasive. Therefore, the prior art rejection is maintained. The arguments supporting the previous rejections are addressed in detail below.

2. Newly amended claim 40 by the amendments filed on 9/30/02 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the new added limitations in claim 40 render an invention that is directed to subject matter, which is non-elected claims.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 40, and 41 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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4. Claims 1-7 and 36 remain rejected, as per the previous Office Action, under 35 U.S.C. 102(b) as being anticipated by Pascucci (US 5,901,087; previously cited).

With regard to claim 1, Pascucci discloses in Fig.2 a comparator circuit comprising an evaluation element (2); and at least first and second input legs each coupled to a corresponding one of a first (B) and second (B') node of the evaluation element, the first and second input legs having non-complementary structures relative to one another and being adapted to receive respective first and second input signals, each of the non-complementary structures having associated therewith a variable parameter having a value that is a function of a corresponding one of the input signals, the evaluation element being adapted to perform a comparison of the first and second input signals.

With regard to claims 2-7, Pascucci also meets these claimed limitations.

Claim 36 is similarly rejected, note the above discussion with regard to claim 1.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 37 remains rejected, as per the previous Office Action, under 35 U.S.C. 103(a) as being unpatentable over Pascucci.

The above discussed the circuit of Pascucci meets all of the claimed limitations except for the limitation that the comparator circuit is fabricated in the integrated circuit. However, it

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would have been obvious to one of ordinary skill in the art to implement the comparator circuit of Pascucci in a single Integrated Circuit for the advantage of being able to reduce the area of the circuit.

Response to Arguments

7. Applicant's argument with respect to the prior art rejections of claims 1, 36 and 37 concerning the differences between Pascucci (US 5,901,087) and the present invention; such as "the evaluation element being adapted to perform a comparison of the first and second input signals. Applicant respectfully submits that such an arrangement is not taught or suggested by the Pascucci reference. More particularly, as will be described below, Pascucci fails to teach or suggest an arrangement in which an evaluation element is adapted to perform a comparison of first and second input signals applied to respective first and second input legs as claimed"; is not persuasive because all the recited limitations in the claims are clearly anticipated by the reference, i.e., Pascucci clearly discloses in the disclosure (see column 4, line 1 through column 5, line 67) that an arrangement in which an evaluation element (2 in instant Fig.2) is adapted to perform a comparison of first and second input signals (Il, Ir). Therefore, the rejections to claims 1, 36 and 37 are proper and remain.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

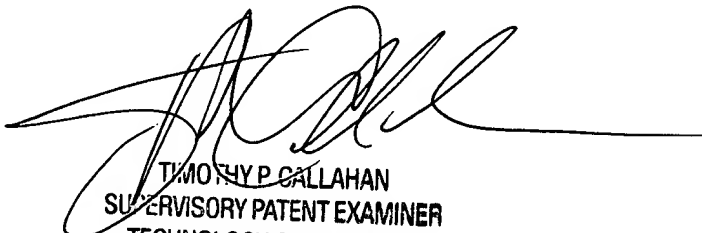
9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hai L. Nguyen whose telephone number is 703-306-9178. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy Callahan can be reached on 703-308-4876. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9318 for regular communications and 703-872-9319 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.

hln

December 24, 2002


TIMOTHY P. CALLAHAN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800